

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

Telecommunications Carriers Eligible for)
Universal Service Support)

TX Mobile, LLC)

Petition for Designation as a)
Lifeline Broadband Provider Eligible)
Telecommunications Carrier)
_____)

WC Docket No. 09-197

**REQUEST OF THE PUBLIC UTILITY DIVISION OF THE OKLAHOMA
CORPORATION COMMISSION TO HOLD IN ABEYANCE THE PETITION OF TX
MOBILE, LLC FOR DESIGNATION AS A LIFELINE BROADBAND PROVIDER**

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SUMMARY

The Public Utility Division of the Oklahoma Corporation Commission (“PUD”) requests that the Federal Communications Commission (“FCC” or “Commission”) hold in abeyance the processing of TX Mobile, LLC (“TX Mobile”) Petition for Designation as a Lifeline Broadband Provider Eligible Telecommunications Carrier (“Petition”) requesting designation as a Lifeline Broadband Provider (“LBP”) eligible telecommunications carrier (“ETC”), “pursuant to section 214(e)(6) of the Communications Act of 1934, as Amended (the Act), sections 54.202 of the Federal Communications Commission’s (FCC’s or Commission’s) rules, the Lifeline Modernization Order, and the Lifeline Broadband Provider Guidance Public Notice...”.

TX Mobile’s Petition seeks an LBP ETC designation in Oklahoma, along with other jurisdictions.¹ TX Mobile does not hold an ETC designation granted by the Oklahoma Corporation Commission (“OCC”). Where ETC designations in Oklahoma have historically been granted by the OCC in accordance with Section 214(e)(2) of the Act, this application represents a request for an ETC designation from which the states are preempted from granting, and leaves such designation the exclusive domain of the FCC.²

There are two critical issues raised by the preemption of state authority to designate LBP ETCs. One issue is whether the FCC has authority to preempt the states in this area, and issue its own ETC designations. The United States Court of Appeals for the District of Columbia is reviewing this important question.³ The other critical issue is what role, if any, state regulatory agencies, such as the PUD, will have in monitoring the activities of these federally designated

¹ The Petition indicates that TX Mobile is requesting LBP ETC designation “for all states other than Alaska and Montana, as well as for the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.” *See also*, Exhibit – TX Mobile, LLC Service Area Zip Codes attached to the Petition.

² 47 C.F.R. § 54.201(j).

³ *See, National Association of Regulatory Utility Commissioners v. Federal Communications Commission and the United States of America* Case No. 16-1170 Petition for Review (filed June 3, 2016).

LBP, and enforcing applicable state and federal Lifeline rules. This issue, as well as several closely related issues, is currently before the FCC.⁴

Beyond these critical issues, PUD has additional concerns with how the FCC's approval process, given the service area information provided by TX Mobile, will be able to determine that the requested designation is in the public interest in accordance with 47 U.S.C. § 214(e)(6), specifically with regard to the rural study areas in Oklahoma that are included in TX Mobile's designation request.⁵

PUD reviews and provides recommendations in response to requests for ETC designation filed with the OCC. Further, PUD, through its Consumer Services group, also engages in monitoring and enforcement activities to ensure ETCs adhere to state and federal rules and laws regarding the provision of Lifeline services in Oklahoma. As such, PUD is concerned about the potential negative impacts to the Lifeline market if the FCC grants ETC designation where statutory authority does not exist and the loss of what, to date, has been effective oversight by states, such as Oklahoma, of the ETCs participating in the Lifeline market. State oversight includes the implementation and enforcement of protections to guard against waste, fraud and abuse in the Lifeline program.

Given that these issues are pending before the FCC and the D.C. Circuit, combined with the fact that the service area information provided is inadequate and inhibits the FCC's ability to

⁴ See, *Petition for Clarification of the Pennsylvania Public Utility Commission*, WC Docket Nos. 11-42, 09-197, and 10-90, dated June 23, 2016.

⁵ TX Mobile's Petition includes Exhibit TX Mobile, LLC Service Area Zip Codes, which provides a list of ZIP codes which TX Mobile indicates identifies "the states and service areas by zip code in which TX Mobile seeks designation as an LBP ETC to provide Lifeline broadband service." (footnote omitted) TX Mobile also qualifies its service area in its indication that it "will make services available to all qualified consumers *consistent with the coverage area of its underlying provider*." (emphasis added) The ZIP codes listed in these exhibits include all ZIP codes in Oklahoma (along with others). Accordingly, TX Mobile's request for LBP ETC designation includes rural study areas, as that is defined within 47 U.S.C. § 214(e)(5), in Oklahoma. PUD is further concerned as to how designation for a service area defined by ZIP codes that is further limited by a reference to the underlying carrier's footprint (which is also undefined), is compliant with the definition of "service area" found at 47 U.S.C. § 214(e)(5) and the designation standard at 47 U.S.C. § 214(e)(6).

fulfill its statutory obligations, PUD believes the best and most prudent course would be to hold the processing of this Petition in abeyance until these issues have been resolved.

A decision to hold TX Mobile's Petition in abeyance would be congruent with the FCC's request that the D.C. Circuit Court hold the consolidated cases, which include NARUC's Petition for Review, in abeyance pending action by the FCC on petitions for administrative reconsideration and clarification (this would include the Pennsylvania Public Utility Commission's Petition for Clarification) of the order under review.⁶ Additionally, the FCC, by holding this Petition in abeyance, will ensure that it has adequate time to collect all relevant information to meet all of its statutory obligations in designating ETCs.

For these reasons, PUD respectfully requests the FCC to hold the processing of the Petition in abeyance until the question of designating authority has been resolved and clarification has been provided as to the enforcement responsibilities and capabilities of state regulatory agencies with regard to the LBP ETCs. The FCC can then process the Petition with the benefit of these issues being resolved and the time necessary to comply with applicable statutory and rule requirements.

⁶ See, Nat'l Ass'n of Regulatory Util. Comm'rs v. F.C.C., *et al.*, Case Nos. 16-1170 and 16-1219, (2016 D.C. Cir.) Motion of the FCC to Hold Case in Abeyance and to Defer the Filing of the Record, (filed September 29, 2016).

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TX Mobile, LLC (“TX Mobile”) has requested that the Federal Communications Commission (“FCC” or “Commission”) grant it designation as a Lifeline Broadband Provider (“LBP”) eligible telecommunications carrier (“ETC”) under the FCC’s newly created Lifeline Broadband Provider (“LBP”) classification,⁷ pursuant to “section 214(e) of the Communications Act of 1934, as Amended (the “Act”), 47 U.S.C. § 214(e) and section 54.202 of the Federal Communications Commission’s (Commission’s or FCC’s) rules, 47 C.F.R. § 54.202.”

TX Mobile is requesting LBP designation “for the sole purpose of receiving universal service Lifeline support for the provision of broadband internet access service (BIAS).” (footnote

⁷ See, *In the Matter of Lifeline and Link Up Reform and Modernization; Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund*, WC Docket Nos. 11-42, 09-197, 10-90, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38 (released April 27, 2016) (“Lifeline Modernization Order”).

omitted) The Petition includes a reference to an Exhibit to the Petition titled TX Mobile, LLC Service Area Zip Codes which includes ZIP codes covering areas of Oklahoma for which LBP ETC designation is being requested.⁸ TX Mobile is not designated as a wireless ETC in Oklahoma for purposes of providing Lifeline services for reimbursement from the federal Universal Service Fund.

Furthermore, concern is created by the fact that the FCC's Lifeline Modernization Order has come under scrutiny. The FCC's authority to grant the relief requested by TX Mobile is currently the subject of review by the United States Court of Appeals for the District of Columbia.⁹ Additionally, the FCC has not acted on the critical issues contained in the Petition for Clarification of the Pennsylvania Public Utility Commission.¹⁰ Given the aforementioned challenges, PUD requests the FCC to hold processing of this Petition in abeyance until such time as the D.C. Circuit resolves the questions around the FCC's authority to designate LBP ETCs, and the FCC addresses the important points of clarification requested by the Pennsylvania Public Utility Commission.

I. Background

The OCC has taken an active and effective role in both designating ETCs for purposes of providing Lifeline services as well as enforcing state and federal rules applicable to the offering

⁸ Notwithstanding the lack of clarity provided by a service area description based on ZIP codes, there is an undefined qualification to this description as the request indicates TX Mobile "will make the services available to all qualified consumers *consistent with the coverage area of its underlying provider.*" (emphasis added) There is no indication as to where, within the requested area, this qualification would apply nor is there any indication as to which ZIP codes in Oklahoma are impacted by this qualification. Accordingly, at this point, it is not clear exactly where the requested LBP ETC designation would be granted. Additional information and review would be necessary to identify the actual service area being requested.

⁹ See, Nat'l Ass'n of Regulatory Util. Comm'ers v. F.C.C., *et al.*, No. 16-1170, (2016 D.C. Cir.) Petition for Review (filed June 3, 2016).

¹⁰ See, Petition for Clarification of the Pennsylvania Public Utility Commission, WC Docket No. 11-42, WC Docket No. 09-197, and WC Docket No. 10-90, dated June 23, 2016.

and provision of Lifeline services in Oklahoma. The OCC has designated twenty-six (26) wireless ETCs for participation in the federal universal service support program, including and/or limited to the Lifeline program, in accordance with 47 U.S.C. § 214(e), 47 C.F.R. § 54.101, 47 C.F.R. § 54.201, 47 C.F.R. § 54.202, and 47 C.F.R. § 54.207.

Also, the OCC has been proactive in its enforcement of federal and state rules as well as in taking a pro-consumer stance. The OCC has put in place effective rules¹¹ that have established necessary and useful requirements for ETCs in Oklahoma. For example, the OCC established parameters around the mobile marketing activities in which most wireless ETCs engage in while operating in Oklahoma.¹² The OCC implemented these rules to ensure that Lifeline consumers could seek and receive service in a safe and reliable manner that would enable them to understand who their provider would be, as well as to know how to go about resolving consumer issues.

As PUD previously indicated in its filed comments,¹³ rules were implemented in response to real problems that were being observed. This included “such things as consumers being unable to identify exactly who their Lifeline service provider actually was, let alone how to reach that carrier or how to have a problem resolved; Lifeline wireless handsets showing up at crime scenes and drug busts; Lifeline services being marketed and sold out of car trunks at the side of the road and consumers easily acquiring multiple wireless handsets activated for Lifeline service and then selling those handsets to anyone willing and able to come up with the requisite amount of cash.”¹⁴

¹¹ OAC 165:55-23-1, *et al.*

¹² OAC 165:55-23-16 Limitations on Marketing of Supported Services by ETCs (“Mobile Marketing Rules”).

¹³ See, *Reply Comments of the Public Utility Division of the Oklahoma Corporation Commission* WC Docket No. 11-42, WC Docket No. 09-197, and WC Docket No. 10-90 (filed August 31, 2015).

¹⁴ *Id* at p. 3.

As a result of PUD's rules and enforcement efforts, ICON Telecom, Inc. relinquished its ETC designation in Oklahoma.¹⁵ This is particularly illustrative as ICON Telecom, Inc. and its owner, Wesley Chew, were ultimately charged and pled guilty to money laundering and making false statements in conjunction with the fraudulent activities ICON Telecom, Inc. engaged in with the federal Lifeline program.¹⁶ Further, at the height of the presence of waste, fraud and abuse in the Lifeline program, Lifeline providers in Oklahoma in 2012 received over \$246 million of federal Lifeline support.¹⁷ That federal support was reduced by over 56% to \$108 million in 2015.¹⁸ There is no doubt that this reduction was connected to the considerable efforts of the OCC and PUD to bring ETCs in Oklahoma into compliance with federal and state Lifeline rules.

PUD believes that any grant of an application for an LBP ETC designation, in advance of the Court ruling on the FCC's legal authority to do so and prior to the FCC's response to the Pennsylvania Public Utility Commission's Petition for Clarification, could permanently undo the significant benefits associated with the undertaking by states, such as Oklahoma, to administer and enforce the state and federal ETC and Lifeline rules.

The Pennsylvania Public Utility Commission clearly points out the unacceptable tension between the Lifeline Modernization Order's preemption of the states' ability to designate LBP ETCs¹⁹ and the failure to specifically and clearly address what role and authority state

¹⁵ See, Cause No. PUD 201300018, *Application of Brandy L. Wreath, Director of the Public Utility Division, of the Oklahoma Corporation Commission for a Show Cause Hearing Against ICON Telecom, Inc.*, filed February 14, 2013. See also, Cause No. EN 201300076, *Complaint, Information, Summons, and Notice of Citation for Contempt*, filed August 13, 2013. See also Cause No. PUD 201300167, *In the Matter of the Notification of ICON Telecom, Inc. of Voluntary Relinquishment of ETC Designations*, filed September 17, 2013.

¹⁶ See, *U.S. v. Chew*, No. CR-14-170-D (W.D. OK, 2014 WL 8108217).

¹⁷ USAC LI05 Annual Low Income Support Amounts by State and Company – January 2012 through December 2014 (<http://www.usac.org/about/tools/fcc/filings/2015/q2.aspx>).

¹⁸ USAC LI05 Annual Low Income Support Amounts by State and Company – January 2013 through December 2015.xls (<http://www.usac.org/about/tools/fcc/filings/2015/q2.aspx>).

¹⁹ *Lifeline Modernization Order* at ¶232.

commissions will have with regard to enforcement, consumer protection and general oversight of the LBP ETCs designated by the FCC. Without such clarification from the FCC, it can be anticipated that any carrier with an LBP ETC designation for Oklahoma will not be considering state requirements, such as Oklahoma's Mobile Marketing Rules, in the development of its processes and procedures. Moving forward with LBP ETC designations without clarification will effectively eviscerate all of the pro-consumer and anti-waste, fraud and abuse programs and efforts implemented and administered by Oklahoma and other states. Additionally, to the extent the Lifeline market in Oklahoma is served by two different types of ETCs (i.e., state designation vs. federal designation) with different obligations, problems such as consumer confusion, delays in complaint resolution, and some ETCs being disadvantaged in the marketplace as compared to others, will negatively impact the entire market. Further, without adequate clarification, such problems begin upon the effective date of an FCC designation of an LBP ETC.

In its recent Public Notice (DA 16-1118, released September 30, 2016) there seems to be an attempt to provide guidance to the states as to their role in regulating LBP ETCs designated by the FCC. The FCC stated at ¶19: "Indeed, the *Lifeline Modernization Order* preserved the 'roles that states have traditionally played in Lifeline' and recognized the states' ability to regulate ETCs subject to the states jurisdiction and applicable state laws." However, the footnote to this statement references ¶¶ 288-289 of the *Lifeline Modernization Order*. At ¶288, the FCC stated: "To the extent a provider only seeks the federal LBP, however, providers are not required to seek approval or designation from the states." While PUD would fully anticipate that an ETC seeking designation for purposes of participating in the Oklahoma Lifeline Fund would be subject to the laws and rules of Oklahoma, the fundamental question is what authority a state has to regulate LBP ETCs designated by the FCC for purposes of only receiving federal support for

Lifeline service. PUD is concerned that, given the lack of clarity, an LBP ETC would take the position that they are not required to comply with any state regulation of its operation as an LBP ETC, thereby leaving states with the burden to resolve this question.

An even more fundamental problem with the FCC processing the TX Mobile Petition for designation as an LBP ETC, is that there is an open question as to whether or not the FCC actually has the authority to make such a designation. While the FCC provides its rationale as to why states are preempted from designating LBP ETCs, NARUC's Petition for Review²⁰ points out that the FCC's action is inconsistent with the statutory language at 47 U.S.C. § 214(e)(2) which provides states with the authority to designate ETCs, thereby raising a legitimate concern and question. PUD believes that this is a question for the courts and the D.C. Circuit's ruling on this important question is critical in order to correctly implement the process for the newly created LBP ETC designation. The concern today is that granting TX Mobile's Petition prior to a decision by the D.C. Circuit would inappropriately circumvent the D.C. Circuit's review of this important question and potentially disrupt the Lifeline market. This will cause consumer confusion as well as unnecessary expense and effort by both state regulators and ETCs themselves in the event the court determines that the FCC does not have the authority it will exercise in granting TX Mobile's Petition.

Furthermore, the likelihood that the six month review period²¹ will run prior to the Court's completion of its review of this question is considerable. The Motion of the FCC to Hold Case in Abeyance and to Defer the Filing of the Record filed with the D.C. Circuit suggests that allowing the FCC to resolve the administrative reconsideration and clarification petitions "may simplify judicial review by resolving issues that the Court would otherwise need to

²⁰ *Supra* n.9.

²¹ 47 C.F.R. § 54.202(d)(3)

address, or by clarifying or providing additional analysis of issues that remain in dispute.”²² The filing further indicates that, if the Court decides to hold the cases in abeyance, the FCC is proposing to advise the Court and the parties at 90-day intervals of the status of the agency’s proceedings. Given this, it is apparent that, unless the FCC holds this Petition in abeyance, TX Mobile will likely have its LBP ETC designation and operations underway for a considerable amount of time before all of these important issues are resolved. Therefore, the FCC would create a situation that could, at best, create significant impairment to consumers, and require considerable effort and resources from all parties to “undo” the approval and associated operations or, at worst, create a situation that cannot be corrected at all.

II. Adequate Review

The consideration of TX Mobile’s Petition for LBP ETC designation, under the current structure, is to be done in accordance with 47 U.S.C. § 214(e)(6). TX Mobile’s request, as it relates to Oklahoma, is for designation in the entire state of Oklahoma,²³ which includes areas served by rural telephone companies. With regard to ETC designation in rural service areas, 47 U.S.C. § 214(e)(6) states:

Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as a eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest. (emphasis added)

²² Nat’l Ass’n of Regulatory Util. Comm’rs v. F.C.C., et al., Nos. 16-1170 and 16-1219 (2016 D.C. Cir.) Motion of the FCC to Hold Case in Abeyance and to Defer the Filing of the Record at p. 6 (filed September 29, 2016).

²³ Again, it is assumed that the entire state of Oklahoma is to be included in the service area as it is described in the Petition. While TX Mobile indicates its actual provision of service will be subject to the coverage of its underlying carrier, there is no indication as to where (or if) this qualification might apply in Oklahoma.

The use of the word “may”, as opposed to “shall”, combined with the requirement to make a specific public interest finding when a rural telephone company service area is the subject of the requested ETC designation, makes clear that such applications are to undergo a higher level of scrutiny than a request for designation in a non-rural service area.²⁴ This need for additional scrutiny should not be circumvented in order to meet an artificial deadline (i.e., six months) for designation. Unless adequate information is provided and appropriate review performed in advance of the six month deadline, the FCC should act upon this Petition by holding it in abeyance. Specifically, PUD believes grant of a petition for LBP ETC designation in a rural service area must include compliance with the public interest requirement found at 47 U.S.C. § 214(e)(6) and should be consistent with the FCC’s own expectations.²⁵

Additionally, the FCC, in its *Memorandum Opinion and Order*, WC Docket Nos. 09-197, 11-42, released April 15, 2013, in which the FCC granted “...limited forbearance from the requirement of section 214(e)(5) of the Act and section 54.207(b) of the Commission’s rules that the service area of an eligible telecommunications carrier (ETC) conform to the service area of any rural telephone company serving the same area” explicitly states the requirement for an affirmative determination of public interest. The FCC stated:

The Act already requires designating commissions to affirmatively determine that designating a carrier as an ETC within a rural service area is in the public interest and that determination is not affected by this grant of forbearance.” (¶ 13) (footnotes omitted)

²⁴ See, *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, released February 27, 2004, ¶ 17. “In establishing these additional statutory protections, we believe that Congress intended state commissions to exercise a higher level of scrutiny when evaluating ETC applications for designations in rural carrier service areas.” (footnote omitted)

²⁵ *ETC Designation Order*, released March 17, 2005, ¶ 42. “We find that before designating an ETC, we must make an affirmative determination that such designation is in the public interest, regardless of whether the applicant seeks designation in an area served by a rural or non-rural carriers.” (footnote omitted). It is clear that relying on a petitioner’s “self-certification” of public interest benefits is not an acceptable substitute for a review of actual facts and circumstances by the granting authority.

The Commission recognizes all of the important issues raised by commenters in determining whether a particular carrier has met the requirements to become an ETC for the limited purpose of receiving Lifeline support, all of which will be addressed by the designating authority when a carrier submits an application requesting designation. Designating authorities will continue to make an independent assessment as to whether designating a carrier as an ETC within a rural service area is in the public interest.” (¶ 15) (footnotes omitted)

We also note that state commissions and this Commission are still required to make an independent assessment as to whether granting a carrier ETC designation is in the public interest before including any part of a rural service area in such a carrier’s service area.” (¶ 18) (footnotes omitted)

By way of example as to the importance of such a review and affirmative finding, the OCC has recent experience with an application requesting ETC designation in all rural service areas in Oklahoma. IM Telecom, LLC d/b/a Infiniti Mobile (“Infiniti”), which held ETC designation in the non-rural service areas in Oklahoma, filed an application seeking “statewide” expansion of its ETC designation which involved all rural telephone company service areas in Oklahoma.²⁶ PUD, in performing its review and analysis, followed its obligations under 47 U.S.C. § 214(e)(2), which also requires a public interest finding when rural telephone company service areas are involved, and, after reviewing information provided by Infiniti and finding operational and financial shortcomings, PUD recommended denial of the application. After conducting discovery and holding a hearing on the merits, the Administrative Law Judge supported PUD’s position and recommended that “the Commission adopt the position of PUD and the RLECs to deny the application, because Infiniti met some but not all of the requirements for extension of its ETC designation.”²⁷ The OCC then issued Order No. 647172 on November 24, 2015 adopting the Administrative Law Judge’s recommendation and denying Infiniti’s application. Obviously, without adequate time to collect necessary information and the

²⁶ See, Oklahoma Corporation Commission Cause No. PUD 201400305, filed October 24, 2014.

²⁷ See, Oklahoma Corporation Commission Cause No. PUD 201400305, Report of the Administrative Law Judge, filed October 8, 2015.

performance of an appropriate review, PUD would not have been able to make an informed recommendation, in compliance with its duty at 47 U.S.C. § 214(e)(2), and the public interest would not have been served.

III. Service Area Requirements

PUD does not believe that TX Mobile's deficient description and use of ZIP codes as the means by which it attempts to define the service area for which it is seeking ETC designation in Oklahoma complies with the statutory requirements. 47 U.S.C. § 214(e)(6), under which the FCC is granting such ETC designations, indicates that the Commission shall, in the case of non-rural areas, and may, in the case of areas served by rural telephone companies, designate ETCs for "a service area." While the Commission has latitude to designate the service area in the instance of non-rural areas, 47 U.S.C. § 214(e)(5) specifies a definition of "service area" when the designation involves an area served by a rural telephone company.²⁸ It states:

In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c) of this title, establish a different definition of service area for such company.

The FCC, within the Lifeline Broadband Provider Guidance Public Notice (DA 16-1118, released September 30, 2016) ("Public Notice") at ¶ 11, directs that "LBPs should describe their proposed service areas by identifying the Census blocks, Census block groups, Census tracts, Postal ZIP Codes, or Counties in which they will offer Lifeline-discounted BIAS service." Footnote number 30 to this paragraph seems to indicate that the use of Postal ZIP Codes is considered to be acceptable in defining a service area under 47 U.S.C. § 214(e)(5) as it is "a

²⁸ This definition is found within the rules at 47 C.F.R. § 54.207(b). This subsection also specifies the process by which an area different from a study area can be redefined.

geographic area established by...the Commission...for the purpose of determining universal service obligations and support mechanisms.” PUD believes such a “basis” for designating a service area may be acceptable for the areas in Oklahoma served by non-rural telephone companies as, in that limited instance, the term “service territory” can be a geographic area established by the Commission. However, when the request involves designation within an area served by a rural telephone company, as is the case with TX Mobile’s Petition as it relates to Oklahoma, the statute itself does not afford the Commission the flexibility to unilaterally establish a geographic area of its choosing. The statute specifies that the service area of a rural telephone company is defined as such company’s “study area.” TX Mobile does not provide any method or indication that would allow the FCC to understand or otherwise identify, based on the ZIP code lists provided, the specific study areas associated with areas served by the rural Oklahoma telephone companies in which ETC designation is requested to be granted. While the FCC has granted limited forbearance²⁹ from the requirement for an ETC’s service area to conform to the service area (i.e., study area) of any rural telephone company serving the same area, there remains the obligation on the part of the designating authority to conduct an independent public interest review “before including any part of a rural service area in such carrier’s service area.” The ability to grant designation in a part of a rural telephone company’s study area does not dismiss the need to identify the study area and exactly what part of the study area is to be designated in order to perform a public interest analysis. Further, 47 U.S.C. §§ 214(e)(5) and 214(e)(6) require this identification in order for the Commission to designate an ETC for a “service area.”

PUD would further suggest that use of an entire state or block of ZIP codes as the definition of a single service area would circumvent or, at a minimum, significantly complicate

²⁹ *Memorandum Opinion and Order*, WC Docket Nos. 09-197, 11-42, FCC 13-44, released April 15, 2013

the public interest analysis that must necessarily be done on a rural company by rural company basis. In granting the forbearance the FCC noted the following:

*State commissions are still required to consider the public interest, convenience and necessity of designating carriers as a competitive ETC in a rural area already served by a rural telephone company. Our decision here to grant forbearance for Lifeline-only designations does not disturb the roles of state commissions and this Commission in the ETC designation process or in the redefinition process in other circumstances when redefinition is required.*³⁰(¶14) (footnotes omitted) (emphasis added)

It would seem clear that, even with the forbearance with regard to rural telephone company service areas, the public interest analysis must address each rural telephone company. This makes sense as the facts for consideration will change from rural company to rural company and will be associated with each such rural company's study area. There is no "one size fits all" approach to the required public interest analysis and there remains a need to identify and understand the rural telephone company's study area, even if designation is to be granted in a partial rural study area.

PUD believes TX Mobile's Petition raises additional service area issues as TX Mobile indicates that it "will make the services available to all qualified consumers *consistent with the coverage area of its underlying provider.*" (emphasis added) PUD notes that the Commission, in the Public Notice at ¶ 11, cautions Petitioners for LBP ETC designation to "be aware that they are required to offer Lifeline-supported BIAS service *throughout the entire designated service area*, and so they should not include geographic areas in their proposed designated service areas if they do not intend to offer Lifeline-supported BIAS in the entirety of that geographic area upon grant of the petition." (footnotes omitted) It would seem likely that there are areas, within the geography described by the ZIP codes for Oklahoma, that TX Mobile's underlying carrier

³⁰

Id.

(now or in the future) is not able to serve. If such unserved areas exist and TX Mobile takes no steps to define and exclude those specific areas from its requested designation, then the Petition is faulty and should be corrected. As it stands, TX Mobile's application requests designation in every Oklahoma ZIP code (and then some), and then attempts to establish an unacceptable caveat to its service area by essentially indicating that it will serve the entire service territory, unless it can't.

Setting aside the issues of whether ZIP codes, as a means of defining a service area in territory served by a rural telephone company, are compliant with the statutory requirements and whether the actual provision of service is throughout the requested service territory, TX Mobile's "definition" of its proposed service area within its Petition is not accurate. There are four (4) ZIP codes³¹ listed in TX Mobile's Exhibit as being associated with Oklahoma that are not reflective of valid or active Oklahoma ZIP codes. Accordingly, TX Mobile's Petition, even if ZIP codes are considered an acceptable form of definition (which PUD does not believe they are as they relate to areas served by rural telephone companies), is deficient in meeting the requirement to identify the service area within which it seeks ETC designation. This alone creates problems for the FCC as it cannot provide an accurate designation, at least not as to Oklahoma, without additional research and analysis of the TX Mobile Petition and, ultimately, a correction being made by TX Mobile.

Finally, the use of a ZIP code list to define the service area requested by TX Mobile would seem contrary to the FCC's ETC designation administrative requirements. The FCC has mandated that "...all future ETC designation orders adopted by the Commission will include: (1)

³¹ Under the Oklahoma specific ZIP codes contained in the Exhibit to the TX Mobile Petition, listed are 73198, 74183, 74194, and 00067. Upon review, via the USPS Look Up a ZIP Code tool (<https://tools.usps.com/go/ZipLookupAction!input.action>) (last visited January 19, 2017), these four are not valid or active Oklahoma ZIP codes.

the name of each incumbent LEC study area in which an ETC has been designated; (2) a clear statement of whether the ETC has been designated in all or part of each incumbent LEC's study area; and (3) a list of all wire centers in which the ETC has been designated, using either the wire center's common name or the Common Language Location Identification (CLLI) code."³² PUD's experience is that ZIP codes, even when accurately identified, do not readily translate to wire centers or ILEC study areas. Accordingly, the FCC's process should allow adequate time to meet these administrative requirements.

These unique statutory requirements for ETC designation in rural service areas, along with the ZIP code errors in the TX Mobile Petition, further support PUD's request that the FCC hold the TX Mobile Petition in abeyance.

IV. PUD Request Specific to Oklahoma

While PUD believes many, if not all, of the concerns it raises with regard to the automatic approval of TX Mobile's Petition for designation as a LBP ETC have at least some applicability to other states, PUD speaks only for these matters as they apply to Oklahoma. Accordingly, PUD would have no issue with a bifurcated approach to TX Mobile's Petition. This would allow for consideration of the Oklahoma component of the Petition to be conducted independently of any other states.

V. Relief Requested

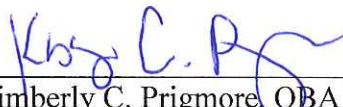
For the reasons stated above, PUD respectfully requests that the FCC hold the processing of this Petition in abeyance pending 1) the D.C. Circuit Court's ruling on NARUC's Petition for

³² *ETC Designation Order*, released March 17, 2005, ¶ 65.

Review; and 2) the FCC's response to the Pennsylvania Public Utility Commission's Petition for Clarification.

The FCC, in taking the requested action, will be able to process TX Mobile's Petition with a full understanding of its authority to grant the relief requested, and can take the time to consider Oklahoma's and other states' accomplishments in assisting Lifeline consumers and curtailing waste, fraud and abuse. The FCC can then make a fully informed determination as to whether or not such positive efforts will continue under this newly formed LBP ETC designation process, or if the state's role in curtailing waste, fraud and abuse is going to be abandoned for an, as yet to be determined, alternative structure of regulatory oversight for such carriers. Finally, by holding TX Mobile's Petition in abeyance, the FCC can also ensure that it has adequate time to collect all relevant information and to fulfill all of its statutory obligations applicable to reviewing and granting requests for ETC designation.

Respectfully submitted,



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